

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No.: 895,675-173  
First Named Inventor: KLINGENSMITH et al.

Prior Application Information:

Serial No. 60/406,183  
Serial No. 60/406,254  
Serial No. 60/406,148  
Serial No. 60/406,184  
Serial No. 60/406,185  
Serial No. 60/406,234

MAIL STOP PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

FILING UNDER 37 C.F.R. §1.53(b)

This is a request for filing for a continuation application under 37 C.F.R. §1.53(b) of pending prior application Serial No. 60/406,183, filed on August 26, 2002, by KLINGENSMITH et al., Serial No. 60/406,254, filed on August 26, 2002, by NAIR et al., Serial No. 60/406,148, filed on August 26, 2002, by NAIR et al., Serial No. 60/406,184, filed on August 26, 2002, by KLINGENSMITH et al., Serial No. 60/406,185, filed on August 26, 2002, by KLINGENSMITH et al., and Serial No. 60/406,234, filed on August 26, 2002, by KLINGENSMITH et al., entitled:

SYSTEM AND METHOD FOR IDENTIFYING VASCULAR TISSUE

For CONTINUATION or DIVISION APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied, referenced above, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

APPLICATION ELEMENTS ENCLOSED

11 Page(s) of Written Description  
5 Page(s) of Claims  
1 Page(s) of Abstract  
3 Sheet(s) of Drawings ☒ formal ☐ informal

CERTIFICATE OF MAILING (37 C.F.R. §1.10)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Mail Post Office To Addressee' in an envelope addressed to the MAIL STOP PATENT APPLICATION, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

EV337190495US  
Express Mail Label No.  
IR1:1046919.1

August 26, 2003  
Date of Deposit

*Cynthia B. Pacheco*  
Cynthia B. Pacheco

2 Page(s) of ☒ Declaration or ☐ Declaration and Power of Attorney

☐ Copy from prior application [37 CFR §1.63(d)]

☐ Newly executed

Other:

☒ Assignment papers (cover sheet and documents(s))

☒ An Information Disclosure Statement, PTO 1449, ☒ with copies of cited items.

☐ Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i). Applicant must attach form PTO/SB/35

#### FEE CALCULATION

☒ Applicant claims small entity status under 37 C.F.R. §1.27.

BASIC FILING FEE:						\$750.00
Total Claims	20	-	20	=	0 x \$18.00	\$0.00
Independent Claims	3	-	3	=	0 x \$84.00	\$0.00
Multiple Dependent Claims	\$280	(if applicable)			<input type="checkbox"/>	\$0.00
TOTAL OF ABOVE CALCULATIONS						\$750.00
Reduction by ½ for Filing by Small Entity.						<input type="checkbox"/> \$375.00
Misc. Filing Fees (Recordation of Assignment)						\$40.00
TOTAL FEES DUE HERewith						\$415.00

#### PRIORITY - 35 USC § 119

☒ Priority of application Serial No.60/406,183, filed on August 26, 2002, Serial No. 60/406,254, filed on August 26, 2002, Serial No. 60/406,148, filed on August 26, 2002, Serial No. 60/406,184, filed on August 26, 2002, Serial No. 60/406,185, filed on August 26, 2002, and Serial No. 60/406,234, filed on August 26, 2002, in the United States is claimed under 35 USC § 119.

☐ The certified copy has been filed in prior U.S. application Serial No. \_\_\_\_\_ on \_\_\_\_\_.

☐ The certified copy will follow.

#### AMENDMENTS

☐ Cancel in this application original claims \_\_\_\_\_ of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes if no new claims are added in a preliminary amendment.)

☐ A Preliminary Amendment is enclosed. (Claims added by Amendment must be numbered consecutively beginning with the number next following the highest numbered original claim in the prior application.)

**RELATE BACK - 35 USC § 120**

- ☒ Relate back information included in preliminary amendment or specification.
- ☐ Please amend the specification as follows:
- ☒ With respect to the prior co-pending U.S. application from which this application claims benefit under 35 USC § 120, the inventor(s) in this application is (are) [37 C.F.R. §1.53(b)(1)]:
  - ☒ the same.
  - ☐ less than those named in the prior application and it is requested that the following inventor(s) identified above for the prior application be deleted [see 37 C.F.R. §§ 1.33(b) and 1.63(d)(2)]:

**METHOD OF PAYMENT OF FEES**

- ☒ Attached is a check in the amount of \$415.00.
- ☐ Charge O'Melveny & Myers's Deposit Account No. 50-0639 in the amount of \_\_\_\_\_.
- ☐ Not attached. No filing fee is submitted. [This and the surcharge required by 37 C.F.R. §1.16(e) can be paid subsequently.]

**AUTHORIZATION TO CHARGE ADDITIONAL FEES**

The Commissioner is hereby authorized to credit O'Melveny & Myers's Deposit Account No. 50-0639 for any over payment of fees and to charge the following additional fees by this paper and during the entire pendency of this application to Deposit Account No. 50-0639:

- ☒ 37 CFR § 1.16 (Filing fees and excess claims fees)
- ☒ 37 CFR § 1.17 (Application processing fees)
- ☐ 37 CFR § 1.21 (Assignment recordation fees)

**POWER OF ATTORNEY & CORRESPONDENCE ADDRESS**

- ☐ The power appears in the original papers in the prior application.
- ☐ The power does not appear in the original papers, but was filed on \_\_\_\_\_ in prior application Serial No. \_\_\_\_\_.
- ☐ A new power has been executed and is attached.

Please send all correspondence to Customer Number 34263:

Please direct all inquiries to John Kappos, at the above Customer Number.

O'Melveny & Myers LLP  
114 Pacifica, Suite 100  
Irvine, CA 92618-3315  
(949) 737-2900

#### MAINTENANCE OF CO-PENDENCY OF PRIOR APPLICATION

- ☐ A petition, fee and response has been filed to extend the term in the pending prior application until \_\_\_\_\_. A copy of the petition for extension of time in the prior application is attached.
- ☐ A conditional petition for extension of time is being filed in the pending prior application. A copy of the conditional petition for extension of time in the prior application is attached.


#### ABANDONMENT OF PRIOR APPLICATION

- ☐ Please abandon the prior application at a time while the prior application is pending or when the petition for extension of time or to revive in that application is granted and when this application is granted a filing date so as to make this application co-pending with said prior application. At the same time, please add the words "now abandoned" to the amendment of the specification set forth in Item V above.

Respectfully submitted,

O'MELVENY & MYERS LLP

Dated: August 26, 2003

By:   
John Kappos  
Reg. No. 37,861  
Attorneys for Applicants

JCK/cp  
Enclosures

THE CLEVELAND CLINIC FOUNDATION

Name of Assignee

9500 Euclid Avenue, Cleveland, Ohio 44195

Address of Assignee

Secretary and General Counsel

Title of person authorized to sign on behalf of assignee